

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EBONY CRYSTAL MALCOM,

Petitioner,

v.

Case No. 15-11175

HON. AVERN COHN

ANTHONY STEWART,

Respondent.

/

ORDER DENYING PETITIONER'S MOTION TO REINSTATE PETITION (Doc. 8)

I.

This is a habeas case under 28 U.S.C. § 2254. Petitioner Ebony Crystal Malcom (Petitioner) is a state inmate, filed a pro se petition for a writ of habeas corpus challenging her convictions for operating a criminal enterprise, two counts of false pretenses with intent to defraud, nine counts of forgery, nine counts of uttering and publishing, seventeen counts of identity theft, and one count of recording a false conveyance of realty. On April 22, 2015, the court dismissed the petition without prejudice because Petitioner did not fully exhaust her state court remedies prior to filing her petition. The Court also declined to issue a certificate of appealability. See Doc. 4; Malcom v. Stewart, No. 15-11175, 2015 WL 1842888 (E.D. Mich. Apr. 22, 2015), reconsideration denied, No. 15-11175, 2015 WL 2449233 (E.D. Mich. May 21, 2015).

Before the Court is Petitioner's affidavit, which is construed as a motion, in which she seeks to reinstate her petition. For the reasons that follow, the motion is DENIED.

II.

Petitioner is not entitled to have her petition reinstated because the Court did not retain jurisdiction over the petition when it was dismissed without prejudice for failure to exhaust. See Lefkowitz v. Fair, 816 F.2d 17, 21 (1st Cir. 1987). Because this Court did not expressly retain jurisdiction over the first petition, Petitioner's motion must be denied. See Wilson v. Warren, 06-CV-15508; 2008 WL 5273633, * 1 (E.D. Mich. Dec. 17, 2008). The denial of Petitioner's motion to reinstate is without prejudice to Petitioner filing a new petition in this district.

Accordingly, Petitioner's motion to reinstate the habeas petition (Doc. 8) is DENIED WITHOUT PREJUDICE.

SO ORDERED.

S/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: December 27, 2017
Detroit, Michigan